



13 August 2021

Australian Securities and Investments Commission

By email: [REDACTED]

Dear Sir/Madam

**COST RECOVERY IMPLEMENTATION STATEMENT
ASIC INDUSTRY FUNDING MODEL (2020-21)**

Purpose

Provide comment in connection with the version of the Cost Recovery Implementation Statement: ASIC industry funding model (2020-21) ("CRIS") to enable the ASIC to consider my comments, and comments of other stakeholders in preparing the final CRIS.

Background

1. My comments are limited to the impact of CRIS on Registered Liquidators.
2. I am a Registered Liquidator. I practice as Levi Consulting Pty Ltd ("Levi"). I became a Registered Liquidator in November 1993, and I have been in practice specialising in the conduct of formal corporate insolvency matters including liquidations, receiverships, voluntary administrations, deeds of company arrangement pursuant to *Corporations Act 2001* continuously since November 1993.
3. The operation of CRIS is not easily understood by persons that are not familiar with the conduct of liquidations in Australia.
4. All liquidations in Australia are conducted by Registered Liquidators.
5. For formal insolvency appointments under the *Bankruptcy Act 1966* involving persons and partnerships (not companies), there is a Public Servant or Public Officer that accepts appointments, and conducts work that may be without assets to pay for those services.
6. For appointments under the *Corporations Act 2001* involving companies (not persons or partnerships) there is no Public Servant or Public Officer that accepts appointment. A Registered Liquidator in private practice performs that work. A Registered Liquidator can rely on *Corporations Act 2001* section 545 to limit the volume of unfunded work completed, but there is an expectancy, that considerable work be conducted by the Registered Liquidator regardless that a matter is unfunded, and that time-occupied will not be remunerated, and also, the Registered Liquidator will incur disbursements including fees for searching information on directors and officers from ASIC database, and also, fees under the CRIS, and other disbursements.
7. The greater the number of matters the Registered Liquidator works on, it increases the number of notifiable (or metric) events measured by CRIS and the Levy payable.
8. For smaller practices, like Levi, that often perform a higher volume of smaller matters relative to a larger firm which may be preoccupied with several larger matters throughout a year, the smaller practice, like Levi, will have more metric events and pay a higher disproportionate amount because the metric events accumulate when an appointment has been made, when events occur at the front-end of a new matter,

and when a matter rolls over 30 June. It is not intended that the description of metric events be expansive. In addition there is a flag-fall fee of \$2,500 for each registered liquidator. So the fee payable is the flag-fall plus the number of metric events incurred multiplied by a Levy payable per metric event. The Levy payable per metric event has increased from \$79.16 (FY 2019-20) to \$127 in FY 2020-21 (indicative). This 38% increase is unsustainable alongside the adverse financial impact of COVID-19 on Registered Liquidators.

9. The calculation of the value of a metric event is a function of the total expenditure of ASIC during the relevant period, and the total number of metric events accrued by all Registered Liquidators. In circumstances where the number of Registered Liquidators has declined, then there are fewer Registered Liquidators to share the burden, and the dollar rate per metric event will increase. In circumstances where there has been a 50% reduction in the number of new corporate liquidations during COVID, then there will be less metric events incurred across all registered liquidators, and the dollar rate per metric event will increase.
10. For the relevant period, Registered Liquidators' revenues have been affected by COVID, and there has been limited new work for Registered Liquidators. ASIC statistics record the percentage reduction in appointments at about 50% reduction relative to pre-COVID. During 2020 there has been no motivation for companies to enter into liquidation or be forced into liquidation during COVID arising from JobKeeper, Safe Harbour (COVID), and a 6-month moratorium or process during COVID on winding up applications.
11. Registered Liquidators are reeling from the adverse financial impact of COVID. Anecdotal media reports indicate that COVID and post-COVID demand for Registered Liquidators will exceed supply. That is a myth. Furthermore, the introduction of the Small Business Reconstruction regime under *Corporations Act 2001* has been unsuccessful, and has had almost no demand in the market nationally. It is not a source of work.
12. The costs of being a Registered Liquidator are relatively high. Registration as a Registered Liquidator requires payment of a fee to ASIC (separate to payment under the CRIS Levy). A Registered Liquidator needs to be a member of two professional associations to maintain prerequisites for their license, and as a prerequisite to membership, to maintain and pay for a minimum number of professional development hours. Also, the Registered Liquidator needs to hold a policy of professional indemnity insurance. All of these requirements cost money, and before any work is conducted on a liquidation that may have no assets. This partly explains the reason that many registered liquidators resigned at the time of introduction of the ASIC Levy.
13. On the costs of the ASIC and the CRIS, it is substantially opaque in indicating the nature of the expenses incurred by ASIC and their reasonableness. There is no independent review of their expenses, nor any scope to require that their expenses be subject to the same test as to proportionality imposed on a liquidator when a liquidator seeks to have fees approved. There is no discount in the amount that ASIC seeks when it runs proceedings that are unsuccessful, and potentially should not have been commenced.

Conclusion

There needs to be significant financial relief, if not full relief, from this proposed payment for Registered Liquidators.

Yours faithfully



David Levi
Director, Levi Consulting Pty Ltd